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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

MARK BURRIS; LOUISE GRIDER; and LILLA SMYTHE,
Petitioners,
v.

FIRST FINANCIAL CORPORATION; and
HOME OWNERS FUNDING CORPORATION OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

BRIEF OF RESPONDENT
FIRST FINANCIAL CORPORATION
IN OPPOSITION

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Dated: September 6, 1991



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No. 91-228

MARK BURRIS; LOUISE GRIDER; and LILLA SMYTHE,
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**BRIEF OF RESPONDENT
FIRST FINANCIAL CORPORATION
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Respondent First Financial Corporation respectfully submits this Brief in Opposition to Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

The questions presented for review by Petitioners do not satisfy any of the considerations governing review on writ of certiorari set forth in the Rules of this Court. A petition for writ of certiorari should be granted only

when there are special and important reasons therefor. There are none in this case. Furthermore, the decision of the Eighth Circuit is well reasoned and correct.

I. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT IS NOT IN CONFLICT WITH A DECISION OF THE SUPREME COURT OF ARKANSAS

Petitioners contend the decision of the Eighth Circuit is in conflict with the decision of the Supreme Court of Arkansas in *Bishop v. Linkway Stores, Inc.*, 288 Ark. 106, 655 S.W.2d 426 (1983). The question before the Supreme Court of Arkansas in *Bishop* was whether Amendment 60 to the Arkansas Constitution (now found at Ark. Const. Art. 19, § 13) provided for a further limitation on interest rates applicable only to consumer loans and credit sales. *Bishop* at 429. The Supreme Court of Arkansas was *not* presented with the question, and did not rule on, whether the adoption of Amendment 60 in 1982 overrode any federal statutes preempting state usury laws. Since the Supreme Court of Arkansas did not address or rule on this issue in *Bishop*, the decision of the United States Court of Appeals for the Eighth Circuit does not conflict with the decision of the Supreme Court of Arkansas in *Bishop*.

Petitioners' argument reads out of Amendment 60 the section which states that the provisions "are not intended and shall not be deemed to supersede or otherwise invalidate any provisions of federal law applicable to loans or interest rates including loans secured by residential real property." Ark. Const. Art. 19, § 13(d) (ii). For the reasons discussed in its opinion, the Eighth Circuit rejected this argument and correctly held the adoption of Amendment 60 in 1982 did not override the FHA and VA preemption statutes.

II. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT CORRECTLY HELD THE CONTRACTS IN QUESTION COMPLIED WITH DIDMCA

Petitioners contend the decision of the Eighth Circuit with regard to whether the prepayment provisions in the contracts complied with the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. § 1735f-7 note ("DIDMCA"), decided an important question of federal law which has not been, but should be, settled by this Court. The decision of the Eighth Circuit in this case is simply an application of relevant law to specific contract forms. It does not decide an important question of federal law of sufficient general application to warrant this Court's review. Furthermore, for the reasons discussed in its opinion, the Eighth Circuit correctly held the prepayment provisions in the contracts complied with DIDMCA.

III. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DID NOT DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION

Petitioners contend the Eighth Circuit erred in holding the \$50.00 acquisition charge is not a prepayment penalty prohibited by DIDMCA. Petitioners argue the decision of the Eighth Circuit is based only upon evidence not before the District Court or Eighth Circuit, citing a footnote from the Eighth Circuit's opinion. Petitioners contend this case should be summarily reversed and remanded to the District Court simply because counsel for Respondent First Financial Corporation answered an unsolicited question by the Eighth Circuit during oral argument. In fact, the decision of the Eighth Circuit is based upon the contract provisions, which clearly state the debtor may prepay without penalty. The contract forms were a part of

the record and the decision of the Eighth Circuit was based upon the record properly before it.

CONCLUSION

For all of the foregoing reasons, Respondent First Financial Corporation respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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